

further sale, lease, development or redevelopment for residential, commercial or industrial use.

Developer contract means a contract between a developer and the city for construction of main pursuant to section 47-164 of this Code.

Main, unless otherwise designated, includes both water and wastewater main as well as off-site main.

Nonrevenue producing water main means water main supplying fire sprinkling systems and other water services for which the city receives no water revenue.

Off-site main means water or wastewater main lying outside the tract of land that is being developed or redeveloped.

Permittee means a person granted a permit to construct main pursuant to section 47-165 of this Code.

Pro-rata charges means the charges established by city council for connection to off-site main as may be established under section 47-168 of this Code.

Public easement means an easement or right-of-way dedicated to the city or to the public, either by a recorded plat or recorded instrument of conveyance, or acquired by condemnation, within which main may be constructed, maintained and operated.

Subdivision means a tract or parcel of land subdivided into lots or tracts by a subdivision or development plat and to be sold or leased for residential, commercial or industrial purposes.

Utility construction permit or *permit* means a permit issued pursuant to section 47-165 of this Code allowing the developer to construct main. (Ord. No. 96-1248, § 1, 11-26-96)

Sec. 47-162. Construction by the city; cost sharing agreements between city and developer.

The department shall install main under the provisions hereof only in public easements. The department shall construct main for the unserved areas of the city as required by state law and may

ARTICLE IV. DEVELOPMENT AND UTILITY SYSTEM EXTENSIONS*

Sec. 47-161. Definitions.

As used in this article, the following terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Construction cost means the full cost for materials and labor for construction of main, excluding the cost for surveys, easements and engineering and inspection services.

Developer means the owner or agent of the owner developing lots or tracts of property for

*Editor's note—Ord. No. 96-1248, § 1, adopted Nov. 26, 1996, did not specifically repeal former art. IV, §§ 47-161—47-171; hence, the provisions of said ordinance have been treated as superseding the provisions of former art. IV.

construct other main identified in the city's capital improvements plan, except as otherwise required by city council.

Subject to the availability of city funds for capital improvements as determined by city council, a developer has the option of having the city construct the necessary main for the proposed development pursuant to a cost-sharing contract approved by the city council. Under any such contract, the developer must provide the engineering design and pay one-half of the construction cost. The city will pay one-half the cost of construction and provide construction inspection services. In addition, the city will pay the entire cost of oversizing the main if required by the department.

In the event the developer is required under the contract to pay the city \$5,000.00 or more, the developer cost shall be subject to pro-rata reimbursement as provided in sections 47-162 through 47-170.

(Ord. No. 96-1248, § 1, 11-26-96; Ord. No. 00-171, § 1, 3-8-00)

Sec. 47-163. Developer construction—In general.

Except for main constructed by the city under section 47-162 of this Code, all main dedicated to the city for public use must be constructed under either a developer contract or a utility construction permit as provided under this article. As a condition for acceptance by the city, main must be constructed in accordance with the following requirements:

- (1) The developer must obtain water or wastewater capacity sufficient to serve its development as provided in articles IX and X of this chapter.
- (2) An engineer registered in the state must design main. The design of main must conform to the design standards promulgated by the director. All main must be constructed in public easements, and the minimum diameter size for off-site main shall be eight inches, unless otherwise permitted by the department. Plans and

profiles shall be approved by the department prior to commencement of construction.

- (3) The developer must obtain all required subdivision or development plat approvals required under this Code.
 - (4) Construction of main estimated by the department to cost more than \$25,000.00 must be guaranteed by payment and performance bonds in the form approved by the legal department. Bonds must be in the amount of the construction contract, and the city shall be a obligee for the performance bonds. The performance bond must guarantee materials and workmanship, including surface restoration, for a period of one year after acceptance by the department on behalf of the city.
 - (5) The developer must provide the department original record drawings in the form prescribed by the director.
 - (6) The department must inspect and approve the construction when completed.
- (Ord. No. 96-1248, § 1, 11-26-96; Ord. No. 00-171, § 2, 3-8-00)

Sec. 47-164. Construction by developers under developer contract.

Subject to the availability of funds allocated for that purpose by city council, the city may share in the expense of construction of the main and other eligible costs by any of the following methods, as applicable, at the option of the developer:

- (1) *50 percent reimbursement:* Reimbursement to the developer in the amount of 50 percent of the construction cost for the main plus the balance of over sizing costs plus design costs for a total reimbursement that does not to exceed the maximum contract amount not requiring council approval under the Houston City Charter; or
- (2) *30 percent reimbursement:* Reimbursement to the developer for 30 percent of the construction cost for the main plus the balance of over sizing costs; or

- (3) **70 percent reimbursement:** For new low or moderate cost single family homes (single family residences located within the city limits having initial purchase prices as certified by the developer that do not exceed the latest available 12-month listing for median price single family housing in the city as published by the Real Estate Center at Texas A&M University), reimbursement to the developer for the following eligible costs:

- a. 70 percent of water and sanitary sewer main construction costs,
- b. 100 percent of related design cost,
- c. all over sizing costs not reimbursed under subsection "a." above,
- d. up to a \$3,000.00 per lot reimbursement of storm sewer drainage cost, and
- e. the developer's interest cost up to the market interest rate the city's financial advisor determines the city would pay if it issued bonds on the city's water and sewer system on the date the developer contract is countersigned by the city controller.

For all other new single-family homes, reimbursement to the developer for the following eligible costs:

- a. 70 percent of water and sanitary sewer main construction costs,
- b. 100 percent of related design costs,
- c. all over sizing construction costs not reimbursed under subsection "a." above, and
- d. the developer's interest cost up to the market interest rate the city's financial advisor determines the city would pay if it issued bonds on the city's water and sewer system on the date the developer contract is countersigned by the city controller.

Under this option, the developer must furnish bid documents for the project in a form acceptable to the director. The city shall take bids at its own cost, award the

construction contract, and then assign it to the developer upon verification that the developer has secured financing to pay contract amount in a form acceptable to the director.

The city shall reimburse the developer for eligible costs upon the completion of at least 25 percent of the total number of housing units required under the terms of the developer contract.

- (4) A developer shall not be reimbursed for any eligible costs, including interest, and shall waive any right to claim such reimbursement if the developer fails to:
 - a. Obtain a fully executed developer contract, including city council approval where necessary, prior to beginning construction of the facilities.
 - b. Begin actual construction of the facilities described in the developer contract within 18 months after the date of countersignature of the developer contract by the city controller, or
 - c. Complete construction of 100 percent of the facilities described in the developer contract (and 25 percent of the number of housing units required by a 70 percent developer reimbursement contract) within three years of the date the developer commences construction.

In no case shall the city reimburse the contractor for an amount in excess of the amount set out in the developer reimbursement contract, which must not ever exceed \$500,000.00 per contract.

- (5) To the extent permitted by law, and contingent upon city council's having appropriated sufficient funds to pay for such contracts, city council authorizes the director to execute developer contracts under subsections (1) and (2) above in standard forms approved by the city attorney on behalf of the mayor without prior submission to city council.

- (6) In the event construction costs not reimbursed by the city are \$5,000.00 or more, such unreimbursed cost shall be subject to pro-rata reimbursement as provided in sections 47-168 through 47-170.
- (7) In the case of construction of water main, the department shall be responsible for chlorination required by state law prior to use by the city.

(Ord. No. 96-1248, § 1, 11-26-96; Ord. No. 00-171, § 3, 3-8-00; 01-76, § 1, 1-17-01)

Note—Section 2 of Ord. No. 01-76, adopted January 17, 2001, states that the provisions of the section as amended shall apply to all developer participation projects commenced after the effective date. For purposes of this section, a project is "commenced" on the date the city council or the director, as applicable, approves a developer contract. The provisions of section 47-164 of the Code of Ordinances as they read prior to their amendment by this section are saved from repeal for the limited purpose of and shall remain in effect and govern all developer participation projects commenced before the effective date of this section.

Sec. 47-165. Construction by developers under permit.

(a) In the event there are not sufficient funds allocated or materials available for execution of the developer contract, or the developer chooses not to execute a developer contract, the developer may proceed to construct the main under a permit issued by the department.

(b) The department shall promulgate a permit application form. The permit application shall include the following items:

- (1) The name and address of the developer;
- (2) The location of main;
- (3) A copy of the approved subdivision or development plat showing the proposed development;
- (4) Evidence that the developer has obtained sufficient water and wastewater capacity for its development;
- (5) Evidence of ownership of the proposed development;
- (6) An original copy of the plans and specifications prepared by an engineer regis-

tered in the state (if not already approved when the subdivision or development plat was approved by the department); and

- (7) Any additional information as may be required by the department to determine compliance under this article.

(c) Upon submittal of a complete application (including plans and specifications already approved by the department), valid performance and payment bonds as required under section 47-163 of this Code, and evidence that the developer has obtained required water and wastewater capacity for the development, the director shall grant the permit.

(Ord. No. 96-1248, § 1, 11-26-96)

Sec. 47-166. Requirements for construction under permit.

A developer constructing main under a utility construction permit must comply with each requirement described in section 47-163 of this Code, including the furnishing of performance and payment bonds executed by the contractor and its surety in the full amount of the construction contract.

(Ord. No. 96-1248, § 1, 11-26-96)

Sec. 47-167. Management and control.

All main constructed under a permit shall, upon acceptance by the city, be managed, controlled and regulated by the city, and connections therewith shall be governed and regulated in the same manner as connections with any city utility lines, except that for off-site main constructed under a permit the right is hereby reserved to the permittee to receive, for private service connections, the compensation fixed by the city council under section 47-168 of this Code. It is distinctly understood that such main shall be placed so as not to interfere with the construction in the streets of the city of any other underground pipes, ducts, conduits or other structures laid on the part of the city, and the city shall have the right to take the same up, or disconnect, or destroy or abandon the same when in the best interest of the city in the discretion of the director; and the city shall be in no wise responsible for any cost or damage on account thereof. The city shall have

the right to lay any main down the streets where permittee-constructed main runs even though it may render such main useless without being in any manner required to compensate the permittee. It is intended by these provisions merely to furnish to the permittee a means of reimbursing himself from other private persons similarly situated under the rules and regulations that may be established by the city council, and not in any manner to obligate the city to pay or cause to be paid any sum of money on account thereof or to vest in any persons constructing such main any private right against the city or the public use. (Ord. No. 96-1248, § 1, 11-26-96)

Sec. 47-168. Statement of costs; pro-rata charges.

If the construction cost of the main not paid or reimbursed by the city is \$5,000.00 or more, the permittee or developer may apply to the department for pro-rata reimbursement of its costs by each successive person who connects to the off-site main built by the permittee or developer. Within 90 days of the date the main is accepted and approved by the department, the permittee or developer must file with the department: (i) an accurate and verified statement showing the cost of such construction; and (ii) all documents and certificates required under section 47-163 of this Code. Upon determination that the documents are complete and in proper form, the director shall forward them to the city secretary for consideration by city council together with the director's recommendation. When documents have been filed with the city secretary, the city council will, as soon thereafter as practicable, determine and fix the amount that shall be paid per lot, per connection, or per acre by each successive person making a service connection with the off-site main. The schedule of such amount shall be filed in the office of the director, and no person shall be allowed to make service connections with such off-site main for a period of 15 years after city acceptance of the main, unless the person deposits with the department, for the use and benefit of the permittee or developer, the amount required under the schedule approved by city council.

No permittee or developer shall be entitled to pro-rata reimbursement on account of extensions made by others to main previously constructed by such permittee or developer. (Ord. No. 96-1248, § 1, 11-26-96; Ord. No. 00-171, § 4, 3-8-00)

Sec. 47-169. Pro-rata fee account.

A pro-rata fee account is hereby established. The city shall deposit all pro-rata charges collected into such account. Expenditures from such account shall be reserved solely for reimbursement of permittees for the reasonable costs of installing off-site main as approved by city council pursuant to section 47-168 of this Code. (Ord. No. 96-1248, § 1, 11-26-96)

Sec. 47-170. Reimbursement for construction of approved main.

For a period of 15 years after acceptance by the department of the completed off-site main, the permittee shall be entitled to reimbursement for connections from the proceeds of the pro-rata charges established herein. Payment shall be from the pro-rata fee account. The city shall make reimbursements for main extensions semi-annually on May 1 and November 1 of each calendar year. Following expiration of the 15 year period, the city shall cease to collect pro-rata charges for the off-site main. (Ord. No. 96-1248, § 1, 11-26-96)

Sec. 47-171. Violations.

Any person who shall lay or connect into main without a utility construction permit or contract from the city shall be guilty of a misdemeanor, which shall be punishable by a fine not to exceed \$500.00. Each day that the connection is suffered or allowed to exist shall constitute a separate offense. In addition, the department shall disconnect any such unpermitted connection from the city main or otherwise terminate utility services. (Ord. No. 96-1248, § 1, 11-26-96)

Secs. 47-172—47-185. Reserved.